

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE
AT KNOXVILLE

LEONARD LEBRON ROSS v. STATE OF TENNESSEE

Appeal from the Criminal Court for Hamilton County
No. 211454 Don W. Poole, Judge

No. E2007-01133-CCA-R3-PC - Filed November 5, 2007

The petitioner, Leonard Lebron Ross, filed a petition for a writ of error coram nobis in the Hamilton County Criminal Court. The trial court dismissed the petition for failure to state a proper claim for a writ of error coram nobis, which dismissal the petitioner appeals. The State filed a motion requesting that this Court affirm the trial court's denial of relief pursuant to Rule 20, Rules of the Court of Criminal Appeals. Upon review of the record and the parties' briefs, we conclude that the petition was properly dismissed. Accordingly, the State's motion is granted and the judgment of the trial court is affirmed.

Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Criminal Court is Affirmed
Pursuant to Rule 20, Rules of the Court of Criminal Appeals

NORMA MCGEE OGLE, J., delivered the opinion of the court, in which JAMES CURWOOD WITT, JR., and D. KELLY THOMAS, JR., JJ., joined.

Leonard Lebron Ross, Mountain City, Tennessee, Pro se.

Robert E. Cooper, Jr., Attorney General and Reporter; Benjamin A. Ball, Assistant Attorney General; and William H. Cox, III, District Attorney General, for the appellee, State of Tennessee.

MEMORANDUM OPINION

On October 5, 1993, the petitioner was convicted by a jury of especially aggravated robbery, attempted second degree murder, and burglary. He received a total effective sentence of thirty-five years. The proof adduced at trial revealed that the petitioner; his aunt, Novella Owens; and his girlfriend, Vatonya Hollins, broke into the house of the victim, seventy-nine-year-old Mary Sanford. Once inside, Owens wrestled Sanford to the floor. At trial, "Owens admitted that she took [a] hammer and struck Mrs. Sanford two or three times on the head while appellant was disconnecting the television set." State v. Leonard Lebron Ross, No. 03C01-9404-CR-00153, 1995 WL 357821, at *2 (Tenn. Crim. App. at Knoxville, June 15, 1995). Owens attempted to stifle Sanford's screams with a pillow. As Sanford was passing out, she "felt a man's hands on her thighs and Owens' hands squeezing her throat." Id. at *1. When Sanford regained consciousness, she realized that she was

missing a 19" portable color television and the accompanying remote control. The trio returned while Sanford was cleaning the blood from her head and face. Sanford asked them to leave, and eventually they did. Police discovered the petitioner's fingerprint on a watch case on Sanford's dresser. Additionally, bloody footprints matched shoes which were stained with the victim's blood and were worn by Hollins and Owens. The petitioner's shoes were clean. Id. at *2.

The petitioner's convictions and sentences were affirmed by this court on direct appeal. Id. at *1. However, our supreme court remanded to this court on the issue of consecutive sentencing in light of State v. Wilkerson, 905 S.W.2d 933 (Tenn. 1995). State v. Leonard Lebron Ross, No. 03C01-9404-CR-00153, 1995 WL 699951, at *1 (Tenn. at Knoxville, Nov. 27, 1995). On remand, this court again affirmed the petitioner's convictions and sentences. State v. Leonard Lebron Ross, No. 03C01-9404-CR-00153, 1996 WL 167723, at *1 (Tenn. Crim. App. at Knoxville, Apr. 10, 1996), refiled as State v. Leonard Lebron Ross, No. 03C01-9404-CR-00153, 1996 WL 467690, at *1 (Tenn. Crim. App. at Knoxville, Aug. 15, 1996). The petitioner then filed for post-conviction relief, which was denied. This court affirmed the denial of post-conviction relief. Leonard Lebron Ross v. State, No. 03C01-9802-CR-00077, 1999 WL 357339, at *1 (Tenn. Crim. App. at Knoxville, June 4, 1999).

Thereafter, on January 3, 2007, the petitioner filed a motion to reopen his post-conviction petition. This motion was followed on January 11, 2007, with a motion to reopen his post-conviction petition or, in the alternative, a petition for writ of error coram nobis. In his petitions, the petitioner claimed that the proof adduced at trial revealed that he was actually innocent of the crimes because Owens testified that she, not the petitioner, beat Sanford. The petitioner also alleged that he obtained through a public records act "police report and notes that there was DNA evidence that exonerated the petitioner of any violence." The petitioner acknowledged that his petition was not timely filed; however, he alleged that House v. Bell, ___ U.S. ___, 126 S. Ct. 2064 (2006), provided an "actual innocence exception to procedural bar."

The trial court dismissed the petition, finding:

Arguably, the lack of inculpatory DNA evidence, like the co-defendant's admission, was apparent to the defense and the prosecution's duty to disclose did not arise. . . . In that event, the evidence or lack thereof is not new or newly discovered.

Inarguably, however, even if exculpatory DNA evidence was not apparent to the defense, it was immaterial and cumulative, being entirely consistent with the theory of the prosecution and the testimony of the petitioner's co-defendant and the victim that the former struck the latter in the head with a hammer two or three times while the petitioner was disconnecting the victim's television set. Contrary to the petitioner's apparent belief, a defendant may be criminally responsible as a principal for the conduct of another

person. . . . When one defendant is so responsible, neither the other's admission of guilt nor any lack of DNA evidence establishes his innocence. In the petitioner's cases, the verdicts reflect his criminal responsibility not only for his own conduct but for that of his co-defendant, a responsibility that any new or newly discovered DNA evidence or lack thereof does not affect.

Thus, the trial court denied the petitioner's motion to reopen his post-conviction and the petition for a writ of error coram nobis. On appeal, the petitioner challenges only the trial court's denial of his petition for a writ of error coram nobis, specifically arguing that his co-defendant's trial testimony and the newly discovered DNA evidence entitle him to a new trial.

Tennessee Code Annotated section 40-26-105 (2003) provides:

There is hereby made available to convicted defendants in criminal cases a proceeding in the nature of a writ of error coram nobis, to be governed by the same rules and procedure applicable to the writ of error coram nobis in civil cases, except insofar as inconsistent herewith Upon a showing by the defendant that the defendant was without fault in failing to present certain evidence at the proper time, a writ of error coram nobis will lie for subsequently or newly discovered evidence relating to matters which were litigated at the trial if the judge determines that such evidence may have resulted in a different judgment, had it been presented at the trial.

It is well-established that the writ of error coram nobis "is an *extraordinary* procedural remedy . . . [that] fills only a slight gap into which few cases fall." State v. Mixon, 983 S.W.2d 661, 672 (Tenn. 1999). Generally, a decision whether to grant a writ of error coram nobis rests within the sound discretion of the trial court. State v. Hart, 911 S.W.2d 371, 375 (Tenn. Crim. App. 1995).

We note that a petition for a writ of error coram nobis must be filed within one year of the judgment becoming final in the trial court. Tenn. Code Ann. § 27-7-103 (2000). "A judgment becomes final in the trial court thirty days after its entry if no post-trial motions are filed. If a post-trial motion is timely filed, the judgment becomes final upon entry of an order disposing of the post-trial motion." Mixon, 983 S.W.2d at 670. The petitioner acknowledges that his petition for a writ of error coram nobis was filed well outside the statute of limitations, but he asks us to toll the statute of limitations because of due process concerns. Specifically, the petitioner cites House v. Bell, ___ U.S. ___, 126 S. Ct. 2064 (2006), claiming that House provides an "actual innocence exception to procedural bar." We note that House is inapplicable to the instant case as it concerns a procedural bar for federal habeas relief for cases filed outside the statute of limitation, a bar which can be suspended when new, reliable evidence not presented at trial raises sufficient doubt of a petitioner's guilt as to call the result of trial into question. Id. at ___, 126 S. Ct. at 2076-77. Accordingly, we conclude that due process does not require tolling; regardless, the petitioner is not entitled to relief. See Workman v. State, 41 S.W.3d 100, 103 (Tenn. 2001).

Clearly, the petitioner's co-defendant's trial testimony is not "newly discovered evidence," and as such cannot be a basis for a writ of error coram nobis. Further, the petitioner has failed to attach to his petition or to his appeal the DNA results which he claims demonstrates his "innocence." Therefore, we are unable to review this claim. Moreover, as noted by the trial court, the evidence presented at trial overwhelmingly demonstrated the petitioner's guilt, by at least criminal responsibility, of the convicted offenses. Thus, the trial court determined that the petitioner's purported "newly discovered evidence" would not have affected the outcome of his trial. We agree. Accordingly, the trial court did not err in denying the petition for writ of error coram nobis.

Upon due consideration of the pleadings, the record, and the applicable law, we conclude that the petitioner has not established that he is entitled to a grant of a writ of error coram nobis based upon "newly discovered evidence." Accordingly, the State's motion is granted. The judgment of the trial court is affirmed in accordance with Rule 20, Rules of the Court of Criminal Appeals.

NORMA MCGEE OGLE, JUDGE